

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ACL COMPLAINT NO. R5-2008-0518

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
IN THE MATTER OF

WINEMUCCA TRADING COMPANY LIMITED, INC.

FORMER SHASTA PAPER COMPANY FACILITIES AND PROPERTIES:
SHASTA PULP AND PAPER MILL
WASTEWATER TREATMENT LAGOONS
SHASTA COUNTY

This complaint is issued to Winemucca Trading Company Limited, Inc. (hereafter Discharger) pursuant to California Water Code (CWC) section 13350, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This complaint is based on findings that the Discharger failed to comply with Cleanup and Abatement Order No. R5-2004-0717 (CAO), issued by the Regional Water Quality Control Board, Central Valley Region (Regional Water Board) under the authority of CWC sections 13304 and 13267.

The Assistant Executive Officer of the Regional Water Board finds, with respect to the Discharger's acts, or failure to act, the following:

1. Simpson Paper Company (Simpson) was the former landowner and operator of a paper manufacturing facility (Paper Mill) in Anderson, Shasta County. Wastewater generated at the Paper Mill was treated as follows: wastewater was first treated in three clarifiers for primary solids removal. The clarifier solids were dewatered with a screw press and then taken to the Twin Bridges Landfill. Four holding basins were used to even out the solids loading to the clarifiers. After clarification, the wastewater was discharged to two treatment lagoons equipped with mechanical aerators. Effluent from the wastewater treatment lagoons was applied to land at the Shasta Ranch and discharged to the Sacramento River in accordance with Waste Discharge Requirements (WDR) Order No. 93-198 (NPDES No. CA 0004065), adopted by the Regional Water Board on 17 September 1993.
2. On 11 January 1999, Shasta Acquisition Inc., doing business as Plainwell Paper Shasta Paper Company, Inc., (Shasta Paper), purchased the Simpson land and began operating the Paper Mill. On 28 April 2000, the Regional Water Board rescinded WDR Order No. 93-198 and prescribed requirements for the Shasta Pulp and Paper Mill waste discharges in WDR Order No. 5-00-082, NPDES No. CA 0004065 (the Permit). On 31 October 2001, Shasta Paper filed for bankruptcy and the facility was closed, partially dismantled, and the discharge line to the Sacramento River was sealed. On 27 January 2005, the Regional Water Board

rescinded the 2000 Permit because the facility would no longer reopen as a pulp and paper mill.

3. The Shasta Paper wastes stockpiled on land and stored in containers, holding basins, clarifiers, and wastewater treatment lagoons, were not removed and properly disposed of when, on 17 September 2003, the *Order Approving Settlement Agreement and Mutual Release of Claims Between The Estate and Congress Financial Corporation* (Bankruptcy Case No. 01-32653-B-7) was issued in the United States Bankruptcy Court for the Eastern District of California, Sacramento Division.

Previous Enforcement

4. On 9 February 2004, the Executive Officer issued Cleanup and Abatement Order No. R5-2004-0700 to Simpson and Congress Financial Corporation requiring cleanup and abatement of wastes stockpiled, stored, and discharged to the Shasta Paper parcels regulated by the Permit.
5. On 20 May 2004, Congress Financial Corporation auctioned and sold the sixty-two Shasta Paper parcels to Michael Sommers, Secretary of the Winemucca Trading Company LTD, a Tortola, British Virgin Islands corporation. Congress Financial Corporation provided prospective bidders, including the Discharger, knowledge of the existence of Cleanup and Abatement Order No. R5-2004-0700 prior to the auction.
6. On 29 October 2004, the Executive Officer rescinded Cleanup and Abatement Order No. R5-2004-0700 and issued the Discharger, pursuant to CWC sections 13304 and 13267, Cleanup and Abatement Order No. R5-2004-0717, requiring cleanup and abatement of wastes stockpiled, stored, and discharged at the Former Shasta Paper Company Facilities and Properties (Assessors Parcel Numbers 090-090-008, 090-100-004, 090-140-007, 090-140-008, 090-150-001, 090-150-008, 090-150-009, 090-150-010, 090-150-011, 090-150-012, 090-160-010, 090-170-001, 090-170-004, 090-170-005, 090-170-007, and 090-170-008).
7. The Discharger is charged with violating the terms of Cleanup and Abatement Order No. R5-2004-0717, for which the Regional Water Board may impose liability under CWC section 13350.
8. The CAO required the Discharger, in part, to:

Action 9. By 1 April 2005, remove and properly dispose of petroleum coke and black liquor sludge stored at the Shasta Pulp and Paper Mill using a method approved by the Executive Officer.

Action 10. By 1 April 2005, sample and characterize the sludge from the wastewater treatment lagoons and the holding basins and clarifiers

at the Shasta Pulp and Paper Mill and submit the results to the Regional Water Board.

Action 11. By 1 April 2005, submit a plan to the Regional Board to properly dispose of the sludge in the wastewater treatment lagoons and the holding basins and clarifiers at the Shasta Pulp and Paper Mill and a plan to clean-close the holding basins and wastewater treatment lagoons pursuant to Title 27 California Code of Regulations Section 21400. The plans shall include an implementation schedule with a defined date of when the disposal of sludge and closure of the wastewater treatment to lagoons and holding basins will be complete, but the final completion date shall be no later than 1 October 2006. The closure plan and disposal method must be approved by the Executive Officer.

Action 12. Within 30 days of approval of the closure plan by the Executive Officer, implement the plan.

9. Pursuant to CWC section 13350, civil liability may be imposed for the following violations of the CAO:

Failure to Properly Dispose of Black Liquor Sludge

- a. In a 6 April 2005 letter to the Discharger, staff provided notice that failure to remove the black liquor sludge and other residual paper mill substances is a violation of the CAO. Staff encouraged immediate action and requested the Discharger submit a technical report, by 15 June 2005, describing removal and disposal activities. The Discharger failed to submit the report.
- b. On 19 December 2006 and 2 January 2007, staff inspected the Shasta Pulp and Paper Mill and determined that a storage tank, labeled 35% liquor, still contained a tar-like substance. The staff inspections confirm that the Discharger failed to properly dispose of the black liquor. Failure to remove this material is a violation of the Action Item #9 of the CAO, which requires that the Discharger, "remove and properly dispose of petroleum coke and black liquor sludge stored at the Shasta Pulp and Paper Mill using a method approved by the Executive Officer" by April 1, 2005.

Failure to Characterize Sludge in the Holding Basins

- c. On 7 March 2005, the Discharger submitted the initial *Sludge Characterization* report for the wastewater treatment lagoons. The two composite samples discovered the presence of dioxin in the sludge. On 20 May 2005, the Discharger submitted the *Treatment Lagoon and Clarifier Sediment Sampling Results* and reported the following:

| Location | Area | Sediment Volume (cubic yards) |
|---------------|-------------------|----------------------------------|
| Clarifier 1 | 300 square feet | 10 |
| Clarifier 2 | 3,000 square feet | 160 |
| Lagoon Pond 1 | 5.5 acres | 34,000 |
| Lagoon Pond 2 | 30 acres | 195,000 |

These reports are substantially incomplete. The Discharger failed to sample and characterize the sludge in Clarifier 3 and the four holding basins, resulting in a violation of the Action Item #10 of the CAO which requires that the Discharger, "sample and characterize the sludge from the following areas - the wastewater treatment lagoons and the holding basins and clarifiers at the Shasta Pulp and Paper Mill - and submit the results to the Regional Board" by April 1, 2005.

Failure to Remove Sludge and Implement Closure

- d. On 5 October 2006, the Assistant Executive Officer issued the Discharger an Order pursuant to CWC section 13267 requiring, by 10 October 2006, submittal of a technical report describing the results of the sludge characterization performed at the wastewater treatment lagoons, holding basins, and clarifiers; a Feasibility Study addressing disposal of residual sludge in the wastewater treatment lagoons, holding basins and clarifiers and final closure of these containment structures in accordance with California Code of Regulations, title 27, sections 20005 et seq.; parcel information; and cost estimates for closure and post-closure maintenance associated with capping and closing the paper pulp sludge wastes in-place at the wastewater treatment lagoons.
- e. On 10 October 2006, over a year after the initial 1 April 2005 deadline to submit a plan to the Regional Water Board to dispose of the sludge in the lagoons and the holding basins and to clean-close them, the Discharger submitted the *Feasibility Study, Wastewater Treatment Facility*. The Feasibility Study included results of sludge characterization at the wastewater treatment lagoons and clarifiers, but did not include sludge characterization at the holding basins. Five cleanup options were evaluated for protection of human health and environment, compliance, reduction of toxicity through treatment, effectiveness, ability to implement, and cost; Alternative 1, no action; Alternative 2, close-in place; Alternative 3, consolidate and cap; Alternative 4, clean closure; and Alternative 5, sludge or pond reuse.
- f. In a 17 October 2006 letter, the Discharger requested a 6-month extension to evaluate Alternative 5. This request was denied by the Assistant Executive Officer on 17 November 2006.
- g. On 8 December 2006, the Discharger selected Alternative 3, Consolidate and Cap-In-Place and provided the following schedule to implement the proposed alternative:

| Activity | Proposed Due Date |
|---|---------------------|
| Revised SWPPP/Divert Water from lagoons | By 31 March 2007 |
| Complete CEQA process | By 30 November 2007 |
| RAP/RDP/CQA Plan | By 31 March 2008 |
| Dewater Ponds | By 30 June 2008 |
| Windrow and dry sludge | By 1 October 2009 |
| Consolidate and CAP Footprint | By 1 October 2010 |
| Cap Sludge/Rehabilitate Lagoon area | By 1 October 2011 |
| Submit Completion Report | By 31 January 2012 |

- h. The Discharger has thus far failed to meet the initial step in the selected Alternative by failing to Revise SWPPP/Divert Water from Lagoons. Therefore, at a minimum, the Discharger has been in violation of Action Item #12 of the CAO, which requires the Discharger to implement an approved closure plan according to the deadlines accepted by the Regional Water Board, since 31 March 2007.
10. To summarize, the Discharger has failed to comply with the CAO by failing to remove black liquor and other residual paper mill substances from the Former Shasta Paper Facilities (Findings 9.a through 9.b); by failing to characterize sludge in clarifier 3 and the holding ponds as required by the CAO (Finding 9.c); and by failing to remove sludge and implement closure (Findings 9.d through 9.h).
11. CWC section 13350 states, in part:
- “(a) Any person who (1) violates any ... cleanup and abatement order hereafter issued, reissued, or amended by a regional board ...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).*
- *****
- “(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both.*
- (1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.*
- *****
- (B) When there is no discharge, but an order issued by the regional board is violated, except as provided in subdivision (f), the civil liability shall not be less than one hundred dollars (\$100) for each day in which the discharge occurs.*

“(f) A regional board may not administratively impose civil liability in accordance with paragraph (1) of subdivision (e) in an amount less than the minimum amount specified, unless the regional board makes express findings setting forth the reasons for its action based upon the specific factors required to be considered pursuant to Section 13327.”

12. CWC section 13327 states:

“In determining the amount of civil liability, the regional board ... shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”

13. The Discharger has violated numerous terms of the CAO for a significant period of time, as illustrated below.

| Violation | Initial Due Date | Violation Through | # of Days in Violation |
|--|------------------------------|--|-------------------------------|
| Failure to Properly Dispose of Black Liquor Sludge | 1 April 2005 | 2 Jan 07, at a minimum (last inspection date – Black Liquor Sludge may still be present) | 642 days, at a minimum |
| Failure to Characterize Sludge in the Holding Basins | 1 April 2005 | Current Date (has not yet been received by the Regional Water Board) | 1085 days |
| Failure to Remove Sludge and Implement Closure | 31 March 2007, at the latest | Current Date | 356 days |

The maximum liability that can be imposed by the Regional Water Board under CWC section 13350 is \$5,000 per violation, per day. Therefore, the maximum administrative liability is \$10,415,000 ((642 + 1085 + 356) days times \$5,000 per day). Absent specific findings under CWC section 13350(f), the minimum liability under CWC section 13350(e) is \$208,300 ((642 + 1085 + 356) days times \$100 per day).

14. The Discharger's benefit by not complying with the CAO is approximately \$100,000. Based on the Discharger's October 2006 Feasibility Study, the estimated cost to clean close is \$2,800,000 and the estimated cost to consolidate and cap is \$2,050,000. By failing to cleanup the waste, the Discharger was able to earn interest on the estimated

cost at a savings rate of approximately 4% per year. The economic benefit was estimated by multiplying 0.04 by \$2,425,000 $((\$2,800,000 + \$2,050,000)/2)$.

15. Regional Water Board staff spent a total of 100 hours preparing this Complaint. The total cost for staff time is \$13,000 based on a rate of \$130 per hour.
16. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

WINEMUCCA TRADING COMPANY LIMITED, INC IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Regional Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **three million dollars (\$3,000,000)**, which includes \$13,000 in staff cost and \$100,000 to recover the economic benefit derived from the acts that constitute the violations. The amount of the proposed liability is based on a review of the factors cited in CWC section 13327, and the State Water Resources Control Board's Water Quality Enforcement Policy.
2. A hearing on this matter will be held at the Regional Water Board meeting scheduled on **12/13 June 2008**, unless the Discharger agrees to complete the following by **21 April 2008**:
 - a. Waive the hearing by completing the attached form and returning it to the Regional Water Board; and
 - b. Pay the proposed civil liability of three million dollars (\$3,000,000) in full.

The hearing waiver and payment (in the form of a check made payable to the *State Water Pollution Cleanup and Abatement Account*) should be sent to the Regional Water Board's office at 415 Knollcrest Drive, Suite 100, Redding, CA 96002, by **21 April 2008**.

3. If a hearing on this matter is held, the Regional Water Board will consider whether to affirm, reject or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

Signed by

JAMES C. PEDRI, Assistant Executive Officer

21 March 2008

(Date)

**WAIVER OF HEARING FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Winemucca Trading Company Limited, Inc., (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint No. R5-2008-0518 (hereinafter the "Complaint");
2. I am informed of the right provided by California Water Code section 13323, subdivision (b), to a hearing within ninety (90) days of service of the Complaint;
3. I hereby waive the Discharger's right to a hearing before the California Regional Water Quality Control Board, Central Valley Region, within ninety (90) days of the date of service of the Complaint; and.
4. I certify that the Discharger will remit payment for the civil liability imposed in the amount of three million dollars (**\$3,000,000**) by check, which contains a reference to "ACL Complaint No. R5-2008-0518" and is made payable to the "*State Water Pollution Cleanup and Abatement Account*."
5. I understand the payment of the above amount constitutes a settlement of violations alleged in the Complaint.
6. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.

(Name)

(Title)

(Date)